B & ORS v. ROCKWILLS TRUSTEE BHD

HIGH COURT MALAYA, KUALA LUMPUR
ROZ MAWAR ROZAIN JC
[CIVIL CASE NO: WA-24NCvC-4176-12-2022]
24 MAY 2023

Abstract – *Beneficiaries of a trust may lawfully end it if they are sui juris – of full age and of sound mind, that the assets under the trust are absolutely theirs. However, a beneficiary does not have indefeasible interest in the legacy if the deceased had clearly intended for him to only possess it absolutely when he attains a certain age. Thus, before reaching the required age, the beneficiary does not have legal interest to enable an application for early termination of the trust to be considered. In such situation, the principle of Saunders v. Vautier is not applicable.*

SUCCESSION: *Will – Trust – Termination of trust – Application for early termination of trust – Whether matter of urgent necessity arose – Whether son had indefeasible interest in legacy of moveable and immoveable properties of trusts – Whether son's interest contingent interest until attaining certain age – Principle of Saunders v. Vautier – Whether applicable*

TRUSTS: *Termination – Application for – Application for early termination of trust – Whether matter of urgent necessity arose – Whether son had indefeasible interest in legacy of moveable and immoveable properties of trusts – Whether son's interest contingent interest until attaining certain age – Principle of Saunders v. Vautier – Whether applicable*

The applicants were the son, the widow, the brother-in-law and the daughter of the deceased respectively. They sought a termination of two trusts created under the deceased's will where the defendant was the sole executor and trustee for the deceased's estate. The defendant objected to this application. The deceased passed away on 24 May 2021 and had left a will, his last testament. For the movable assets and immovable assets entitled by the son, the deceased, as evident by his will, had created two trusts respectively which were the 'welfare trust' comprised of any provision set aside for it, including the son's entitlement in the moveable assets, while the 'property trust' comprised of any provision set aside for it, including the son's entitlement in the immovable assets. The applicants wrote to the defendant seeking its cooperation to terminate the welfare trust and the property trust ('trusts'). The applicants emphasised that the son was turning 35 years of age in under eight months and that, *inter alia*, (i) the son, the beneficiary, was *sui juris* – of adult age, sound mind, and had an absolute indefeasible interest in the legacy under the trusts as its sole beneficiary; (ii) the other applicants were convinced that the son was of sufficient maturity and was competent to independently handle his own financial affairs and assets; and

(iii) following the deceased's demise, the son was considered the family patriarch. The applicants submitted that pertaining to the financing of the company (which was the legacy of the deceased), the son would inherit the deceased's shareholdings upon turning 35 years of age in eight months and there was a concern about the breach of the conditions that could lead to a recall of the various financing facilities, which would expand to whether it would trigger cross-default on other facilities of the company and its subsidiaries. It was the applicants' concern that it would jeopardise the reputation, financial position and credit rating of the company's group. The applicants further contended that the banks had inquired about the indebtedness of the company after the deceased's demise and that there was an urgency to notify the shareholders and therefore the son required immediate access to his inheritance. In summary, the applicants' main reason to terminate the trusts was to sustain not just to finance and sustain the living expenses of the son who had married, the widow, the daughter and her family, but also to ensure that the finance facilities granted to the company were not jeopardised.

Held (dismissing application with costs):

(1) The son did not solely live on the RM10,000 monthly provided by the welfare trust. In 2021, he earned remuneration of RM1,770,000 as a director of the company, as confirmed by the company's annual report. He was appointed as the Deputy Chief Group Chief Executive Director of the company since 1 September 2021 and earned that salary as well. Furthermore, the RM10,000 according to the will was for the son's allowance alone. His medical and educational expenses were covered under the welfare trust, separate from the RM10,000 allowance provided for. This court was not satisfied that the son needed more which would only be achieved with the termination of the trusts. As to the upkeep and maintenance of the lifestyle that the son, the widow and the daughter were used to, the widow was not entirely bereft and penniless as the bulk of the deceased's liquid assets were bequeathed to her. The applicants had failed to satisfy this court that it was a matter of urgent necessity to terminate the trusts to sustain the daily living expenses of the son, the widow and the daughter. (paras 21-23)

(2) The son and/or any of the applicants could seek confirmation from the banks on its position regarding the change of shareholding from the deceased to the son *vis-a-vis* the conditions of the terms of the finance facilities. There was no necessity or any requirement for the transfer of the shareholding to be done at this point which would result in the early termination of the trusts. To assume that there would be a recall of the finance facilities seemed to be without basis especially when the fact that the deceased's shares were transmitted to the defendant as trustee and that the son was the beneficiary of the shares in the company were

announced. This information, which was in the public domain, had not changed the status and the ongoing relationship of the finance facilities by the banks to the company. If the banks were not to agree with the change of shareholdings from the deceased to the son, it mattered not whether the shareholdings were transferred now or in eight months' time when he turns 35 years old. The point was that the son and/or any of the applicants must engage with the banks to ascertain whether there was a need to have all the shares transferred to his name before the maturity of the trust. (paras 26-28)

(3) Should the son or any of the applicants desire for the disposal of any property, it could be done without the need to terminate the trust. Especially so when the deceased had clearly expressed that any disposal of the properties in the property trust could only be done with consultation and consent in writing from the protector and the son. The applicants have the avenue to liquidate any of the trust properties through the defendant. The will and the expressed intention of the deceased were not meant to burden his legatees, the applicants. With regards to the warrants of the company, evidence showed that it was cheaper to buy the mother-shares from the market instead of exercising the warrants. Therefore, there was no justification to urgently terminate the trusts now before their maturity as it did not make commercial sense to exercise the warrants at this juncture. Even if the son whom it was claimed had business acumen and was competent to handle financial affairs and assets, so wished to exercise the warrants, he had six months to hunt for funding before their maturity. So factually, there did not seem to be an urgent reason for an early termination of the trusts for the son to come into possession immediately all that have been held for him before he turns 35 years old as so willed by the deceased. (paras 30-32)

(4) This court was not convinced that the son now had an indefeasible interest in the legacy of the moveable and immoveable properties of the trusts, as the deceased had clearly intended for him to only possess it absolutely when he turned 35 years old. The right was postponed and delayed. The will must not be read disjunctively but as a whole, as the intention was clear that the son's interest in the trust properties was not vested as of yet. Clauses 20 and 21 stipulated the time period of when the inheritance was to be absolutely the son's. The deceased had specified that the trust properties were to be given to the son absolutely in eight months' time when he turns 35. It could not yet be said that the son had a vested interest in the trust properties. (paras 35 & 36)

(5) The son's interest in the trust properties was contingent interest until he attained the age of 35. Should he not have the fortune to turn so, the deceased had clearly stated that the trust properties were to be given to the son's surviving children in equal shares. If the son died leaving no children, then the trust properties shall be distributed in accordance with

A the manner of distribution of the residuary estate. It was with certainty that if the son did not reach the age of 35, then the trust properties were to be reverted or rather distributed according to the deceased's wishes. The trust properties were not to become the estate of the son before attaining 35 years of age. The defendant carried a duty to ensure the
B deceased's wishes and intentions as stated in the will were adhered to and executed. To this extent, the defendant's obligation stretched to the son's children (unborn at this time) for the next eight months. The defendant as trustee was equipped with powers to facilitate the applicants to enjoy and benefit from the legacy of the deceased.
C (paras 41-44)

(6) This court had considered the powers granted by ss. 59 and 60 of the Trustee Act 1949 to order for a termination of the trusts if it was minded that it was expedient to do so. It was not expedient in this particular case. The principle of *Saunders v. Vautier* could not be stretched to apply
D to this case for a termination of the trusts. (paras 45-46)

Case(s) referred to:
Lembaga Pengelola Sekolah Sekolah Jenis Kebangsaan (C) Chiao Ching & Ors v. Jemaah Pengurusan Tadika Chiao Ching & Ors [2018] 1 LNS 2110 CA ***(refd)***
Musfirah Nabila Musa v. Radziah Mohd Nor & Anor [2019] 1 LNS 2095 HC ***(dist)***
E *Saunders v. Vautier [1841] 4 Beav 115* ***(dist)***
Twin Benefits Ltd v. Barker [2017] EWHC 1412 (Ch) ***(refd)***
William Tan Sam Kit v. Ngui Ban Lee & Anor [2000] 1 CLJ 733 HC ***(refd)***
Yeoh Tiong Lay & Sons Holdings Sdn Bhd v. Annavi s/o Mookan & Anor And Dekor Panel Emas Sdn Bhd (Intervener) [1994] 3 CLJ 265 HC ***(dist)***

F **Legislation referred to:**
Trustee Act 1949, ss. 59, 60

Other source(s) referred to:
Lewin on Trusts, 19th ed, (2015), paras 1-055
Mohsin Hingun's Equity And Trusts In Malaysia, Sweet & Maxwell, 2nd edn, p 288

G *For the appellant - Goh Siu Lin & Denise Lim Hsui Yee; M/s Kee Sern, Siu & Huey*
For the respondent - Audrey Hoh Foong Yee & Terrence Lee Rohui; M/s Terrence Lee & Co

Reported by Suhainah Wahiduddin

H **JUDGMENT**

Roz Mawar Rozain JC:

The Parties

[1] For the sake of privacy, this court has granted an order for anonymity
I of the applicants, the deceased and their family companies that are involved in this matter.

[2] The applicants here are the son, the widow, the brother-in-law and the daughter of the deceased respectively. They sought for a termination of two trusts created under the deceased's will where the defendant is the sole executor and trustee for the deceased's estate. The defendant objects to this application.

The Deceased's Will

[3] The deceased had passed away on 24 May 2021 and had left a will, his last testament dated 18 February 2011. Four months after the deceased's passing, a grant of probate was granted to the defendant on 22 September 2021.

[4] For the widow, the deceased had given the moneys from his insurance policies should the nominations made could not take effect for whatever reason. If the widow did not survive the deceased, then the son and the daughter are given equal shares. If any of them did not survive the deceased, then the said portion were to be given to the grandchildren in equal shares. If there were no grandchildren, then the said portion would be given to either the surviving son or daughter. Since the widow survived the deceased, these provisos did not arise.

[5] For the moneys in his employees provident fund, the same applies. He gave them to the widow. Since the widow survived him, the provisos did not arise.

[6] As to the moneys standing to the deceased's credit in all his bank accounts, the deceased directed the defendant to set aside RM1,000,000 to form part of the estate administration funding trust and the remaining balance to the widow. Again, since the widow survived him, the provisos did not arise.

[7] The deceased had also given all his investments to the widow. They include bonds, unit trusts, structured products, commercial papers, money market instruments, treasury bills and marketable securities invested with any financial institution. Since the widow survived the deceased, the provisos did not arise here.

[8] The deceased gave all his watches to the son. The will stated that if the son did not survive him then the watches will go to the grandchildren. In the absence of any grandchildren by the son, then the watches were to be given to the daughter. The son survived the deceased, so this proviso did not apply.

[9] The deceased gave all his immovable properties to the son. The son survived the deceased, so the proviso did not arise. The immovable properties were listed in the will:

(i) property bearing postal address at S22/27A, Kelana Jaya, Selangor;

A (ii) property bearing postal address at Kemuning Utama, Shah Alam, Selangor;

(iii) property bearing postal address at Kota Damansara, Petaling Jaya, Selangor; and

B (iv) property bearing postal address at St Mary Residences, Kuala Lumpur.

[10] The next clause of the will is reproduced here for easy reference as the arguments hinge on the interpretation of the will where the interpretation of the wordings bears significance to the conclusion by this court. Clause 16 of the will was worded as follows:

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> I direct my Trustee to hold on trust my property bearing postal address xxx, Bukit Damansara 50490 Kuala Lumpur, Malaysia (hereinafter referred to as 'trust property I') until the demise of my wife xxx. If my wife does not survive me then the trust asset shall be distributed in accordance with the manner as if the trust has just ended. This testamentary trust is hereinafter known as Retirement Home Trust.
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> During the trust period, my Trustee shall allow my wife xxx, my daughter xxx, my son xxx and all my grandchildren to stay rent free in trust property I for as long as they desire. My Trustee shall not have the power to sell trust property I.
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> E
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> At the end of the trust period, trust property I shall be transferred to my son absolutely. In the event my son dies without attaining a vested interest leaving children, trust property I shall be given to his surviving children in equal shares. In the event my son dies without attaining a vested interest leaving no children. Trust Property I shall be distributed in accordance with the manner stated in the distribution of my residuary estate.
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> F
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> It is my wish without imposing any legal obligation that my son shall continue to allow my daughter and my grandchildren to stay rent free for as long as they desire even after the end of this trust.

G **[11]** Thus, as clearly expressed in the will, the property at Bukit Damansara is to be immediately held on trust by the defendant for the widow, the son, the daughter and all of the deceased's grandchildren to live in rent free. The period of this trust is the lifetime of the widow. The defendant is not to dispose of the property during the trust period. At the end of the trust period, the property is the son's. It was the deceased's wish that H the daughter and grandchildren shall continue to live there rent free should they wish to. The proviso for the eventuality that the deceased survived the widow does not apply here.

[12] As to the movable assets and immovable assets entitled by the son, the deceased, as evident by his will, had created two trusts respectively. The I 'welfare trust' comprised of any provision set aside for it including the son's entitlement in the moveable assets. While the 'property trust' comprised of

any provision set aside for it including the son's entitlement in the immovable assets. Of material relevance to this suit here are the following clauses:

Clause 4

Pursuant to the xx Welfare Trust, xx Property Trust and Grandchildren Welfare Trust mentioned in Clauses 20, 21 and 22 below respectively, I appoint as the Protector the persons listed below in the order of priority. The person listed first shall act failing which only the following person shall act.

(i) my wife, xx

(ii) my brother-in-law, xx

(iii) my daughter, xx

Clause 20

I direct my Trustee to hold on trust any provision set aside for this trust including the entitlement of my son xx in the movable assets under this Will for the purpose of supporting his maintenance, education and medical expenses until he attains the age of 35. This testamentary trust is hereinafter known as xx welfare trust.

During the trust period my Trustee shall utilise the trust assets in the following manner, in no particular order of priority:

(1) to advance a monthly allowance not exceeding RM10,000.00 or such larger sum as my Trustee calculate to have the same value at my demise as the said amount had at the date of this Will to my son for the purpose of his maintenance expenses;

(2) the said maximum monthly allowance in (1) above is subject to a minimum 2% increase or at the rate of year-on-year percentage changes in Malaysia's Consumer Price Index derived from the Malaysian government's statistics department, whichever is higher, every year until the end of the trust period;

(3) to pay any amount necessary based on professional medical advice for my son's medical expenses;

(4) to pay any amount necessary for my son's education expenses upon consultation with the Protector in writing;

(5) to pay any ancillary expenses related to my estate administration in the event the provision allocated for the same in the Estate Administration Funding trust is insufficient;

(6) to advance any amount necessary to the xx Property Trust for the purpose of maintaining or improving any of the immovable properties held therein upon consultation with the Protector in writing.

During the trust period my Trustee shall have the following powers:

(a) to sell or convert into cash any of the trust assets upon consultation with the Protector. The net proceeds of the sale shall form part of the xx Welfare Trust;

(b) to place the moneys into any interest bearing account(s) with any reputable bank(s) or reputable investment bank(s). The interest generated shall form part of the xx Welfare Trust;

(c) to invest the moneys into any capital guaranteed products with any reputable financial institution(s) upon consultation with the Protector. Any profits and/or returns on investments shall form part of the xx Welfare Trust;

(d) to invest the moneys into any investment grade bonds with credit ratings of 'A' and above rated by reputable credit rating agencies. Any returns on investments including income and coupon payments shall form part of the xx Welfare Trust.

Pursuant to the Trustee's power stated in (a) above, my direct and/or indirect holding of shares in Company xx can only be sold *en bloc* and with consultation and consent in writing from both the Protector and my son.

At the end of the trust period, any balance thereof shall be transferred to my son absolutely. In the event my son dies without attaining a vested interest leaving children, any balance thereof shall be given to his surviving children in equal shares. In the event my son dies without attaining a vested interest leaving no children, any balance thereof shall be distributed in accordance with the manner stated in the distribution of my residuary estate.

Clause 21:

I direct my Trustee to hold on trust the entitlement of my son xx in the immovable assets under this Will (hereinafter referred to as 'Trust Properties') together with any provision set aside for this trust until my son attains the age of 35. This testamentary trust is hereinafter known as xx Property Trust.

During the trust period my Trustee shall have the following powers:

(a) to insure any asset of my estate on such terms as they think fit and

(i) to pay premium out of income or capital,

(ii) to use any insurance money received to restore the asset or if this is not possible to apply it as if it were the proceeds of its sale.

(b) to use the income or capital set aside for this trust for or towards the cost of maintaining or improving any of the Trust Properties;

(c) to lease any of the Trust Properties not occupied by my son at the prevailing market rate to interested parties. The income generated after payment for the maintenance, upkeep of the immovable

properties, the quit rent and assessment shall be given to my son and shall form part of his entitlement in the movable assets under this Will;

(d) to sell any of the Trust Properties at the prevailing market rate to interested parties and the net proceeds of the sale shall be given to my son and shall form part of his entitlement in the moveable assets under this Will.

Pursuant to the Trustee's powers stated in (d) above, any of the Trust Properties can only be sold with consultation and consent in writing from both the Protector and my son.

At the end of the trust period, all Trust Properties together with any balance in the xx property trust shall be given to my son absolutely. In the event my son dies without attaining a vested interest leaving children, all Trust Properties together with any balance thereof shall be given to his surviving children in equal shares. In the event my son dies without attaining a vested interest leaving no children, all Trust Properties together with any balance thereof shall be distributed in accordance with the manner stated in the distribution of my residuary estate.

[13] On 15 September 2022 the son, widow, brother-in-law and daughter, the applicants in this suit, wrote to the defendant seeking its cooperation to terminate the welfare trust and the property trust, collectively known as the trusts. The defendant communicated its refusal on 22 September 2022.

The Basis Of The Application To Terminate The Trusts

[14] Learned counsel for the applicants emphasised that the son turns 35 years of age on 14 January 2024 which is under eight months from now. The reasons cited for the termination include:

(i) the son, the beneficiary, is *sui juris* – of adult age, sound mind, and has an absolute indefeasible interest in the legacy under the trusts as its sole beneficiary;

(ii) when the will was executed by the deceased the son was only 22 years old and had yet to complete his university education;

(iii) the son has a ten-year leadership record that shows his capability of handling large investments and assets as he had been the deputy group chief executive officer since 2021 and an executive director since 2019 of the company;

(iv) the other applicants are convinced that the son is of sufficient maturity and is competent to independently handle his own financial affairs and assets;

(v) following the deceased's demise in 2021, the son is now considered the family patriarch;

(vi) the son is now recently married and supports and maintains his mother the second applicant (widow) and his sister the fourth applicant (daughter) as well as the latter's family;

(vii) the monthly allowance of RM10,000 provided under the welfare trust is inadequate to support the financial needs of the son and his obligations:

(a) the son's life insurance policies taken out by the deceased with payable premiums of RM2,622,000 per annum;

(b) taxes, maintenance, upkeep charges, utilities, *etc*, of the immovable properties and vehicles of the son and his family of RM498,129.31 per annum; and

(c) living expenses, housing, general maintenance of the son and his wife, wife and daughter and her family of around RM40,000 per month.

[15] A point that the learned counsel for the applicants emphasised was pertaining to the financing of the company (which is the legacy of the deceased). The company of which the deceased held 28.67% shareholdings have the following banking facilities:

(i) from RHB Bank Berhad (RHB) an overdraft of RM30,000,000 and a bank guarantee of RM20,000,000. One of the conditions requires the deceased to hold no less than 20% shareholding in the company;

(ii) from Public Islamic Bank Berhad (PIB) sukuk murabahah of RM800,000,000. One of the conditions is that the deceased remains as the single largest shareholder of the company; and

(iii) from OCBC Bank Berhad (OCBC) a perpetual securities programme to the value of RM500,000,000.

[16] Thus, it was submitted that when the son inherits the deceased's shareholdings upon turning 35 years of age in eight months on 14 January 2024, there is a concern about the breach of the conditions that could lead to a recall of the various financing facilities. Then, the concern expands to whether it would then trigger cross-default on other facilities of the company and its subsidiaries. It was the applicants' further submissions that it would jeopardise the reputation, financial position and credit rating of the company's group.

[17] The applicants contended that the banks had inquired about the indebtedness of the company since June 2021 after the deceased's demise. The applicants submitted that there was an urgency to notify the shareholders and therefore, the son requires immediate access to his inheritance.

[18] There is also the issue of 50,949,400 of the company's warrants that matures on 28 July 2024 which the applicants claimed that they need to procure to maintain the family's shareholdings in the company of 28.67%. The son claimed that it is critical to make preparations now to secure the company's position by ensuring that his total combined shareholding remains intact at 28.671%.

This Court's Consideration

[19] In summary, the applicants' main reason to terminate the trusts is to sustain not just to finance and sustain the living expenses of the son who had married, the widow, the daughter and her family, but also to ensure that the finance facilities granted to the company are not jeopardised.

[20] Before this court addresses the laws applicable for an early termination of a trust contrary to the expressed wishes and terms of the deceased's will, this court first ascertains the fact whether the son indeed is in dire need of all that he is entitled to, at once immediately.

Whether There Was An Urgent Need For The Termination Of The Trusts

[21] This court finds that the son does not solely live on the RM10,000 monthly provided by the welfare trust. In 2021, he earned remuneration of RM1,770,000 as a director of the company as confirmed by the company's annual report. He was appointed as the deputy chief group chief executive director of the company since 1 September 2021. So, he now earns that salary as well.

[22] Furthermore, the RM10,000 according to the will is for the son's allowance alone. His medical and educational expenses are covered under the welfare trust, separate from the RM10,000 allowance provided for. This court is not satisfied that the son needs more which would only be achieved with the termination of the trusts.

[23] As to the upkeep and maintenance of the lifestyle that the son, the widow and the daughter are used to, this court noted that the widow is not entirely left bereft and penniless as the bulk of the deceased's liquid assets were bequeathed to her. The applicants had failed to satisfy this court that it was a matter of urgent necessity to terminate the trusts to sustain the daily living expenses of the son, the widow and the daughter.

[24] Whether with his remuneration and the allowance he receives from the welfare trust, the son needs the termination of the trusts to sustain the living expenses and financial obligations, this court examines them. There is no evidence to show that the son's life insurance premiums payable annually is RM2,622,000. Only an excel sheet table tabulating the figure is exhibited. This court agrees with the defendant that this fact has not been proven. In any event, it is true as submitted by the defendant that the policy can be

A adjusted until he turns 35 years old in eight months when thereafter he can revert to the current policy which premiums seemingly he claimed burdensome.

[25] As to the contended adverse impact on the company should the finance facilities be recalled, this court cannot find any evidence to support the B applicants' contention that RHB, PIB, OCBC and/or other banks had made inquiries as to the identity of the 'controlling shareholder' of the company.

[26] It is this court's views that the son and/or any of the applicants can seek confirmation from RHB, PIB and OCBC the banks' position regarding the change of shareholding from the deceased to the son *vis-a-vis* the C conditions of the terms of the finance facilities. There is no necessity or any requirement for the transfer of the shareholding to be done at this point which would result in the early termination of the trusts.

[27] To assume that there will be a recall of the finance facilities seems to D be without basis especially when the fact that the deceased's shares were transmitted to the defendant as trustee and that the son is the beneficiary of the shares in the company were announced. This information which is in the public domain had not changed the status and the ongoing relationship of the finance facilities by the banks to the company. This is evident by the fact that E they had not recalled or axed any finance facilities. To the contrary, PIB had carried out a third issuance of RM82,000,000 of the sukuk murabahah on 25 August 2022.

[28] If the banks were not to agree with the change of shareholdings from the deceased to the son, it matters not whether the shareholdings are F transferred now or in eight months' time when he turns 35 years old. The point is that the son and/or any of the applicants must engage with the banks to ascertain whether there was a need to have all the shares transferred to his name before the maturity of the trust.

[29] The deceased stated his intention to ensure that the property trust G benefit the son sufficiently through the expressed direction in his will whereby he had given the defendant powers which had ensured the son would not be burdened. Clause 21 empowered the defendant to insure any asset on the properties, pay premiums out of income or capital, use the insurance money received to restore the asset or apply it as proceeds of its H sale, use the income or capital set aside to support the cost of maintaining or improving the properties, lease them to generate income or sell at the prevailing market price.

[30] It is in this court's opinion that should the son or any of the applicants desire for the disposal of any property, it can be done without the need to I terminate the trust. Especially so when the deceased had clearly expressed that any disposal of the properties in the property trust can only be done with

consultation and consent in writing from the protector and the son. This court concludes that should it becomes necessary, commercially viable or otherwise, the applicants have the avenue to liquidate any of the trust properties through the defendant. This court concludes that the will and the expressed intention of the deceased were not meant to burden his legatees, the applicants.

[31] With regard to the warrants of the company, evidence shows that it is cheaper to buy the mother-shares from the market instead of exercising the warrants. The price as at 2 February 2022 is RM0.75 per unit whilst the exercise price for the warrant is RM1.79 with a ratio of 1:1. Therefore, this court cannot find any justification to urgently terminate the trusts now before their maturity as it does not make commercial sense to exercise the warrants at this juncture. Even if the son whom it was claimed has business acumen and is competent to handle financial affairs and assets, so wishes to exercise the warrants, he has six months to hunt for funding before their maturity on 28 July 2024.

[32] So factually, there does not seem to be an urgent reason for an early termination of the trusts for the son to come into possession immediately all that have been held for him before he turns 35 years old as so willed by the deceased.

The Law On Early Termination Of Trusts

[33] The principle birthed in *Saunders v. Vautier* [1841] 4 Beav 115 provides that beneficiaries of a trust may lawfully end it should they are *sui juris* which are – of full age and of sound mind, that the assets under the trust are absolutely theirs and that when all are in agreement.

[34] The question argued at length during the submissions was whether the son had a vested legal right to the moveable assets and immovable properties under the trust (the trust properties). Learned counsel for the applicants argued that it was. The son is now over thirty-four years of age, eight months, short of 35, and of sound mind. The moveable assets were given to him as stated in cls. 14 and 17 of the will, whilst the immoveable assets were given to him as stated in cl. 15 of the will.

[35] This court considered these arguments but is not convinced that the son now has an indefeasible interest in the legacy, the moveable and immoveable properties of the trusts, as the deceased had clearly intended for him to only possess it absolutely when he turns 35 years old. The right is postponed and delayed. The will must not be read disjunctively but as a whole, as the intention is clear that the son's interest in the trust properties is not vested as of yet. Though at first blush cls. 14, 15 and 17 of the will may seem to suggest that the gift to the son was absolute, cls. 20 and 21 stipulated the time period of when the inheritance was to be absolutely the

A son's. The definition referred to by the applicants themselves – *AN Saha's Mitra's Legal & Commercial Dictionary*, Eastern Law House (5th edn) defined as follows:

> Vesting Legacy, If a legacy is given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from
B the date of the death of the testator, and if he dies without having received it, it shall pass to his representatives. Indian Succession Act s. 104.

[36] Here the deceased specified that the trust properties were to be given to the son absolutely only in eight months' time when he turns 35. So, it
C cannot be yet said that the son has a vested interest in the trust properties. It is only a contingent interest and this – is aptly defined in *Lewin on Trusts* (19th ed (2015) paras. 1-055:

> A contingent interest is an interest which may become a vested interest but is dependent for that transformation upon a future event of
D occurrence.

[37] The earlier paras. (1-048) clearly stated the difference between a vested interest and a contingent interest:

> A vested interest is an interest which is not subject to any condition precedent. Thus, a beneficiary may have a vested interest in trust assets
E even though he is not entitled to immediate enjoyment of those assets under the terms of trust. Interest may be vested in interest or vested in possession. An interest vested in possession confers an immediate right to present enjoyment of the property one interest that is merely vested interest confers a present right to future enjoyment. Both are distinct from
F a contingent interest which will not invest unless and until some requirement (other than merely the determination of a prior interest) is satisfied, for instance attainment of some specified age, or survival to a particular time, or the occurrence of some external event. Where the property is held on trust "A for life, then to B absolutely" both A and B have a vested interest in the property albeit A has the immediate right to
G enjoy the property. A's interest is vested in possession and B's interest is vested in interest. By contrast, a beneficiary with a contingent interest has no vested right until the contingency occurs. A vested interest is transmissible and may be assigned by the beneficiary and will form part of beneficiaries' estate upon his death.

H **[38]** These definitions were adopted and formed the basis of the decision by the Chancery Division in *Twin Benefits Ltd v. Barker* [2017] EWHC 1412 (Ch). The applicant's supporting authorities cited with approval the principles of *Saunders v. Vautier* (*supra*), however the facts in the cases referred to are distinguishable – *Yeoh Tiong Lay & Sons Holdings Sdn Bhd v. Annavi s/o Mookan & Anor And Dekor Panel Emas Sdn Bhd (Intervener)* [1994] 3 CLJ
I 265 concerned beneficiaries who had no vested legal right in the land, entering into a contract to sell the land which was held and registered under

trustees who held it in trust for them. It was held that, the beneficiaries had no capacity to enter into such contract. Whilst the case of *Musfirah Nabila Musa v. Radziah Mohd Nor & Anor* [2019] 1 LNS 2095 was with regard to a half share of the land of which the plaintiff was entitled to upon reaching the age of majority. Upon the commencement of the said suit, she had also attained the age of majority and thus the said half share of the land is vested in her and belonged to her absolutely.

[39] As with *Saunders v. Vautier* (*supra*), the other references which the applicant had relied on in their submissions mandate the requirement that the beneficiary must have legal interest to enable an application for a termination of the trust to be considered. See *Mohsin Hingun's Equity and trusts in Malaysia, Sweet & Maxwell* (2nd edn) at p. 288:

> Where a beneficiary is *sui juris* and absolutely entitled, he or she may legitimately decide to bring the trust to an end. In *Saunders v. Vautier*, the principle was stated by Lord Langdale MR:
>
> > Where a legacy is directed to accumulate for a certain period, or where the payment is postponed the legatee, if he has an absolute indefeasible interest in the legacy is not bound to wait until the expiration of the period but may require payment the moment he is competent to give a valid discharge.

[40] This court is guided by the Court of Appeal's decision where it upheld in *Lembaga Pengelola Sekolah Sekolah Jenis Kebangsaan (C) Chiao Ching & Ors v. Jemaah Pengurusan Tadika Chiao Ching & Ors* [2018] 1 LNS 2110; [2018] MLJU 1833 at para. 70, that the task of the court is to give effect to the intention of the deceased expressed in the will. This would be gathered from the words expressed in the will which must be read as a whole where relevant clauses explain the said intention (*William Tan Sam Kit v. Ngui Ban Lee & Anor* [2000] 1 CLJ 733; [2000] 1 MLJ 574 at p. 581, also refers).

[41] Therefore, it is this court's conclusion that the son's interest in the trust properties is contingent interest until he attains the age of 35. Should he not have the fortune to turn so, the deceased had clearly stated that the trust properties are to be given to the son's surviving children in equal shares. If the son dies leaving no children, then the trust properties shall be distributed in accordance with the manner of distribution of the residuary estate.

[42] It is with certainty that if the son does not reach the age of 35, then the trust properties are to be reverted or rather distributed according to the deceased's wishes. The trust properties were not to become the estate of the son before attaining 35 years old.

[43] The defendant carries a duty to ensure the deceased's wishes and intentions as stated in the will are adhered to and executed. To this extent, the defendant's obligation stretches to the son's children (unborn at this time) for the next eight months.

[44] There was an argument put forth by the applicants that the defendant was in a position of conflict of interest in the continuance of the trusts. This was premised on the payment of partial cash distribution made from the estate upon notification of the applicants' intention to terminate the trust, the payment was in the amount of RM6,198,961.51. Also, the payment of RM4,000,000 from the trusts as requested by the son. This court is unable to accept this contention. The defendant as trustee is equipped with powers to facilitate the applicants to enjoy and benefit from the legacy of the deceased.

[45] This court considers the power granted by s. 59 and s. 60 of the Trustee Act 1949 to order for a termination of the trusts if it is minded that it is expedient to do so. The reasonings above are enough proof that it is not expedient in this particular case.

Conclusion

[46] Based on these facts and circumstances, this court concludes that the principle of *Saunders v. Vautier* (*supra*) cannot be stretched to apply to this case for a termination of the trusts. The will expressly state the intention of the deceased which was to only grant the son the trust properties absolutely upon him attaining the age of 35 which is in under eight months' time.

[47] This application is hereby dismissed with costs of RM15,000.